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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Exmore and Cheriton, Virginia, and  
Fruitland, Maryland)

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 99-347  
RM-9751  
RM-9761

To: The Chief, Allocations Branch,  
Policy and Rules Division,  
Mass Media Bureau

COMMENTS OF CUMULUS LICENSING CORP.

Cumulus Licensing Corp. ("Cumulus"), the licensee of 216 commercial AM and FM radio broadcasting stations throughout the United States, by its undersigned attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby respectfully submits these Comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding ("NPRM"), DA 99-2758, adopted on December 1, 1999 and released on December 10, 1999, 64 Fed. Reg. 70670 (published on December 17, 1999).

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The *NPRM* seeks comment on two interrelated petitions for rule making to amend the Table of Allotments for FM Broadcast Stations, both involving the community of Exmore, Virginia. Be-More Broadcasting (“Be-More”), the permittee of a new FM station on Channel 291B1 at Exmore, filed a petition for rule making (RM-9751) requesting the reallocation of Channel 291B1 from Exmore to Cheriton, Virginia and the modification of Be-More’s construction permit (File No. BPH-19951109MC) in order to specify Cheriton in lieu of Exmore as the station’s community of license. Great Scott Broadcasting (“Great Scott”), the licensee of Station WKHI (FM) on Channel 298B at Exmore, filed a petition for rule making (RM-9761) requesting the substitution of Channel 298B1 for Channel 298B, the reallocation of the substituted channel to Fruitland, Maryland, and the modification of Station WKHI (FM)’s license in order to specify operation on Channel 298B1 at Fruitland in lieu of operation on Channel 298B at Exmore.

The Commission generally prohibits the removal of the only local transmission service from a community. Due to the fact that Great Scott’s Station WKHI (FM) and Be-More’s as-yet-unbuilt station represent the only local transmission services to the community of Exmore, only one of their two petitions should be granted in order to ensure that Exmore is not deprived of all local aural transmission service. According to Commission policy, the removal of an existing station causes more concern with respect

to loss of service than does removal of an unbuilt station, because the public has not yet come to rely upon the latter. Thus, a grant of Be-More's petition is preferable to a grant of Great Scott's petition, since the Be-More proposal involves the removal of an unconstructed station from Exmore, while Great Scott's proposal contemplates the removal of Exmore's only operating local service.

1. The Commission Generally Prohibits the Removal of a Community's Sole Existing Local Transmission Service

The *NPRM* recognizes that "favorable action on both of these requests will result in Exmore not having any local aural transmission service." *NPRM, supra*, at Para 1. The Commission generally prohibits the removal of an existing service representing a community's sole local transmission service. *Modification of FM and TV Authorizations to Specify a New Community of License, Memorandum Opinion and Order* ("Reconsideration Order"), 5 FCC Rcd 7094, 7096 (1990). Removal of such a service would "... presumptively disserve[] the public interest, ..." *Id.* The Commission will only consider requests to waive the prohibition against the removal of a community's sole local service "... in the rare circumstances where removal of a local service might serve the public interest by, for example, providing a first reception service to a significantly sized population, ..." *Id.* It does not appear from the facts set forth in the *NPRM* that such "rare circumstances" exist in this proceeding. Thus, in order to avoid the removal

of all local transmission service from the community of Exmore, both of Be-More's and Great Scott's petitions for rule making should not be granted.

2. Be-more's Proposal Is Superior to Great Scott's, Since Be-More's Proposal Will Not Remove An Existing Service

In light of the Commission's policy against removing a community's sole local transmission service, it is clear that Be-More has submitted the only petition to amend the Table of Allotments for FM Broadcast Stations that can be granted in this proceeding. That is because Be-More merely proposes to remove the channel allotment upon which an unconstructed station may some day provide a local transmission service to the residents of Exmore, while Great Scott's petition seeks to remove Station WKHI (FM)'s channel allotment, representing Exmore's only operating local radio station. In evaluating proposals to amend Section 73.202(b) of the Rules involving changes in communities of license, the Commission is more troubled by the removal of an existing service from a community than the removal of an unbuilt station, because the public has had no opportunity to rely on service from an unconstructed station. *See, e.g., Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215, 7217 (Chief, Allocations Branch, 1995) (stating that the Commission does not consider the removal of unbuilt stations to

“ . . . represent the same concerns with loss of service that removal of an operating station would represent . . . ,” because they do not constitute a service upon which the public has come to rely); *Pawley’s Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (Ass’t. Chief, Allocations Branch, 1993) (same). Furthermore, the public has a legitimate expectation that existing service will continue, and the Commission will weigh that expectation independently against any service benefits that may result from reallocating a channel from one community to another. *Reconsideration Order, supra*, 5 FCC Rcd at 7097. “ . . . [T]he weight to be accorded the public’s expectation is substantial.” *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6580, 6586 (Chief, Mass Media Bureau, 1991). Accordingly, the public interest will best be served by the retention of Station WKHI (FM)’s channel allotment at Exmore, thereby preserving that community’s sole existing local aural transmission service.

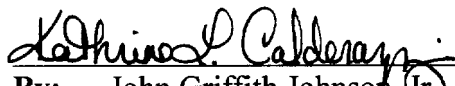
Although the community of Exmore has the potential to receive a new local aural transmission service from the Be-More station, the Commission has previously recognized that “ . . . the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today by simply turning on a . . . radio set.” *Reconsideration Order, supra*, 5 FCC Rcd at 7097. Moreover, it is possible that the community of Exmore might be required to wait for well

over a year for local service from the Be-More station, because that station may not become operational until as late as the end of April, 2001. *See NPRM*, at Para. 5.

In light of the foregoing, the Commission should grant Be-More's petition for rule making and deny the petition for rule making filed by Great Scott.

Respectfully submitted,

**CUMULUS LICENSING CORP.**

  
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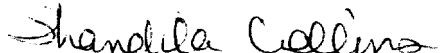
January 31, 2000

**CERTIFICATE OF SERVICE**

I, Shandila Collins, a secretary in the law firm of Paul, Hastings, Janofsky & Walker, LLP, do hereby certify that true copies of the foregoing Comments of Cumulus Licensing Corp. were sent this 31st day of January 2000, by first-class United States mail, postage prepaid, to the following:

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